IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 143 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

MEHSANA DIST COOP MILK PRODUCERS UNION LTD

Appearance:

MR MH JOSHI FOR MR MANISH R BHATT for Applicant.

MR JP SHAH for Respondent.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The following question has been referred under section 256(2) of the Income-tax Act,1961 (hereinafter referred to as 'the Act') for the assessment years 1976-77 and 1978-79 at the instance of the revenue :

"Whether, the claim of the assessee for deduction as made u/s.35C of the I.T.Act,1961 is allowable ?"

2 We have heard Mr.M.H.Joshi and Mr.J.P.Shah, learned Counsel appearing for the respective parties. The question referred to us is concluded by the decision of this Court in the case of Kaira Dist.Co.op.Milk Producers Union Ltd. vs. C.I.T. dated 2/7/2001 in Income Tax Reference No.32 of 1987 wherein the same section viz.35C of the Act came up before this Court for interpretation. It is pertinent to note that in case of the present assessee the Tribunal had followed its decision in the case of Kaira Dist.Co.op.Milk Producers Union Ltd.(Supra).

3 After taking into consideration the provisions of the Act as well as the Circular of the Board it has been held by this Court that under section 35C of the Act an assessee who incurs expenditure for the purpose of obtaining raw material while at the same time incurs such expenditure in a manner so as to undertake development of the recipient and the area in which the recipient is located i.e. rural area would be entitled to weighted deduction under section 35C of the Act.

4 Following the aforesaid decision, we hold that the assessee was entitled to claim deduction under section 35C of the Act. The question referred to us is therefore answered in the affirmative i.e. in favour of the assessee and against the revenue.

5 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt